

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Noah Kim	Team: Squad #8	CCRB Case #: 201908401	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 09/22/2019 8:00 PM	Location of Incident: § 87(2)(b)	Precinct: 72	18 Mo. SOL 3/22/2021	EO SOL 11/6/2021	
Date/Time CV Reported Mon, 09/23/2019 2:14 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 09/23/2019 2:14 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Giovany Diegue	03258	964489	062 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Marat Yermiyayev	15880	966404	062 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Giovany Diegue	Force: Police Officer Giovany Diegue used physical force against § 87(2)(b)	§ 87(2)(b)

Case Summary

On September 23, 2019, § 87(2)(b) filed this complaint with the CCRB via phone [BR01].

On September 22, 2019, at approximately 8:00 p.m., at N § 87(2)(b) § 87(2)(b) was working in the trauma bay of the emergency room. § 87(2)(b) Police Officer Giovany Diegue, Police Officer Yermiyayev, both of the 62nd Precinct, as well as nurses and EMTs were attempting to restrain § 87(2)(b) in order to give him an IV. § 87(2)(b) was agitated, intoxicated and attempting to free himself from the hospital bed he was handcuffed to. All parties were holding down different parts of § 87(2)(b)'s body. PO Diegue removed one of his hands from restraining § 87(2)(b) and punched him in the upper left chest area near his shoulder. § 87(2)(b) told PO Diegue that he was not allowed to punch his patient. PO Diegue ignored § 87(2)(b) and approximately one minute later punched § 87(2)(b) more forcefully in the same place (**Allegation A: Force**; § 87(2)(g) § 87(2)(b) asked PO Diegue to step away from § 87(2)(b) and PO Diegue complied.

Body-worn camera footage (BWC) from several officers was obtained in relation to this incident. The BWC only captured footage before § 87(2)(b) was taken into the hospital and does not capture the alleged force [BR02-BR09].

Allegation (A) Force: Police Officer Giovany Diegue used physical force against § 87(2)(b).

The investigation was unsuccessful in obtaining a statement from § 87(2)(b) [BR25-BR38] As mentioned above, the BWC footage of this incident does not capture the portion of the incident inside the hospital, and thus does not capture the alleged force.

§ 87(2)(b) testified that § 87(2)(b) was brought into the trauma bay on a stretcher laying on his back and hands which were handcuffed. § 87(2)(b) was under arrest for § 87(2)(b), intoxicated, and was bleeding from his head and hands. § 87(2)(b) was brought in by PO Diegue, PO Yermiyayev, and several EMTs. There were two nurses and a medical scribe also present. § 87(2)(b) moved his arms and legs in what appeared to be an attempt to free himself from the handcuffs. § 87(2)(b) was given an injection of Midazolam, a drug used to sedate an individual, so he could be hooked up to an IV. § 87(2)(b) began to calm down and his movements became less aggressive. § 87(2)(b)'s movements appeared as if they were in slow motion, a common effect of the sedative. The handcuffs were removed from § 87(2)(b) by PO Yermiyayev and one of his arms was handcuffed to the side of the stretcher. § 87(2)(b) needed § 87(2)(b) to be more still to put in an IV. § 87(2)(b) and PO Diegue both held down § 87(2)(b) on his left shoulder and arm area while PO Yermiyayev, EMTs, and nurses held down other parts of § 87(2)(b)'s body. PO Diegue punched § 87(2)(b) in the upper left chest area near his shoulder while holding him down. § 87(2)(b) told PO Diegue that he was not allowed to punch his patient, however PO Diegue ignored § 87(2)(b) and less than a minute later punched § 87(2)(b) again with more force in the same place. § 87(2)(b) then asked PO Diegue to step away from § 87(2)(b) which PO Diegue did. § 87(2)(b) asked PO Diegue for his supervisor's information and filed a complaint about the incident [BR10].

PO Diegue testified that § 87(2)(b) informed everyone in the room that § 87(2)(b)'s clothes needed to be removed so they could clean the blood off his body and give him a sedative. Once the handcuffs were taken off to remove his clothes, § 87(2)(b) became agitated and began to kick his legs and swing his arms. PO Diegue attempted to hold down § 87(2)(b)'s hands, but they repeatedly slipped from his grasp because of the blood on them. § 87(2)(b) swung at PO Diegue and punched him in his arm. PO Diegue then pushed § 87(2)(b) down on his chest with his hands in order to restrain him. § 87(2)(b) told PO Diegue that what he was doing was not right. PO Diegue did not respond because he was attempting to handcuff § 87(2)(b). § 87(2)(b) repeated his statement. PO Diegue successfully handcuffed § 87(2)(b) who was still agitated, but now adequately restrained. After § 87(2)(b) was sedated, § 87(2)(b)

approached PO Diegue and requested his name and shield number in order to file a complaint against him. PO Diegue provided § 87(2)(b) with the information.

PO Diegue filled out a Threat Resistance and Injury (TRI) report as a result of the incident [BR11]. PO Diegue testified that he listed that he used a hand strike in the TRI report to describe the way he restrained § 87(2)(b) because of the limited answer options on the TRI report [BR12]. He denied punching § 87(2)(b) in his chest at any point.

PO Yermiyayev testified that he was standing on § 87(2)(b)'s right side and restraining him by holding down his right arm and right shoulder with his hands. PO Yermiyayev did not recall how PO Diegue was restraining § 87(2)(b). PO Yermiyayev did not recall PO Diegue punching § 87(2)(b) at any point during the incident. PO Yermiyayev did not recall if the EMTs stayed in the trauma bay after assisting in bringing § 87(2)(b) into the room. He did not recall if § 87(2)(b)'s kicks or flailing arms contacted anyone [BR13].

§ 87(2)(b) a § 87(2)(b) who was stationed inside the trauma bay during the incident, provided a statement § 87(2)(g) [BR 14]. § 87(2)(b)'s statement was made over the phone § 87(2)(b) [BR14]. § 87(2)(b) was to observe and take notes. § 87(2)(b) was laying on a stretcher with small railings which made it difficult for him to kick out his legs. § 87(2)(b) did not kick anyone despite kicking out his legs, and became calmer as a result of the sedative given to him. While § 87(2)(b) and the others in the room were holding § 87(2)(b) down in order to put an I.V. into him, PO Diegue punched § 87(2)(b) in the left chest area below his shoulder. § 87(2)(b) told PO Diegue that he could not punch his patient, and PO Diegue replied that § 87(2)(b) was kicking around. About one minute later, PO Diegue punched § 87(2)(b) again in the same area of his body. § 87(2)(b) told PO Diegue that he needed to leave and requested to speak with his supervisor. PO Diegue complied and left to get his supervisor [BR14].

EMT § 87(2)(b) and EMT § 87(2)(b) transported § 87(2)(b) to § 87(2)(b) after responding to the scene of his arrest. They both provided sworn statements for this incident [BR 15].

EMT § 87(2)(b) testified that inside the trauma room, both EMTs held down one of § 87(2)(b)'s legs when the handcuffs were removed from behind his back. PO Diegue held down § 87(2)(b)'s left arm, but repeatedly lost his grip. Whenever § 87(2)(b) got his arm free, he attempted to punch anyone that came close to him, however none of the punches contacted anyone. § 87(2)(b) freed his legs multiple times from the restraints and attempted to kick anyone close to him when doing so. His kicks did not contact anyone. After struggling to restrain § 87(2)(b) the group was able to roll him on his side and a nurse injected him with a sedative which calmed him down. EMT § 87(2)(b) did not recall PO Diegue ever punching § 87(2)(b) or § 87(2)(b) telling PO Diegue not to punch § 87(2)(b) [BR15].

EMT § 87(2)(b) provided a statement § 87(2)(g) [BR16]. When § 87(2)(b) requested that the handcuffs be taken off § 87(2)(b) EMT § 87(2)(b) and EMT § 87(2)(b) brought the stretcher out of the room. EMT § 87(2)(b) stood to the left of the doors outside of the room about five feet from the hospital bed where he typed out his paperwork on a laptop. The door of the room was not closed, but he could not see what was going on from the position he was in. EMT § 87(2)(b) heard § 87(2)(b) again request that the handcuffs be taken off § 87(2)(b). A couple of minutes later, EMT § 87(2)(b) heard § 87(2)(b) tell PO Diegue to stop punching his patient. EMT § 87(2)(b) looked inside of the trauma bay and saw PO Diegue holding § 87(2)(b)'s left wrist. No one else was restraining § 87(2)(b). § 87(2)(b) was on his back and his left arm was fully extended. § 87(2)(b) attempted one punch which did not contact PO Diegue. § 87(2)(b) also attempted one kick at PO Diegue which he had to move out of the way of to avoid. [BR16].

§ 87(2)(g)

§ 87(2)(g)

[REDACTED]

§ 87(2)(b)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Patrol Guide procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of service or a third party, or otherwise protect life, or when it is reasonable to place a person in custody or prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances [BR18].

§ 87(2)(g)

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint § 87(2)(b) has been party to [BR17].
- This is the first CCRB complaint that § 87(2)(b) has been party to [BR19].
- PO Diegue has been a member of service for two years. This is the first CCRB complaint he has been a subject in. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was unsuitable for mediation due to the arrest and injury of § 87(2)(b) [BR21].
- According to the New York City Office of the Comptroller, § 87(2)(b) has not filed a Notice of Claim regarding this incident as of November 13, 2019 [BR22].

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

[REDACTED]

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date